

REMARKS

Reconsideration of the present application is respectfully requested in view of the following remarks. Prior to entry of this response, Claims 16-21, 25-26, 35-40, 42, 44, 46-56, 58, and 60-63 were pending in the application, of which Claims 16, 35, and 49 are independent. In the Final Office Action dated May 21, 2009, Claims 16-21, 25-26, 35-40, 42, 44, 46-56, 58, and 60-63 were rejected under 35 U.S.C. § 103(a). Applicants hereby address the Examiner's rejections in turn.

I. Change to Attorney Docket Number

Please note that the Attorney Docket Number for this application is now 60374.0130US01/A-7485.

II. Rejection of Claims Under 35 U.S.C. § 103(a)

In the Final Office Action dated May 21, 2009, the Examiner rejected Claims 16-21, 35-36, 39-40, 42, 49, 52-54, 58, 61, and 63 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,112,239 ("*Kenner*") in view of U.S. Patent No. 6,604,241 ("*Haeri*"). Claims 25 – 26, 37-38, and 50-51 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Kenner* in view of *Haeri* and further in view of U.S. Patent No. 6,889,385 ("*Rakib*"). Claims 44, 46-47, 60, and 62 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Kenner* in view of *Haeri* and further in view of U.S. Patent No. 6,813,639 ("*Nobakhf*"). Claims 48 and 56 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Kenner* in view of *Haeri* and further in view of U.S. Patent No. 5,913,039 ("*Nakamura*"). Claim 55 was rejected under 35 U.S.C. §

103(a) as being unpatentable over *Kenner* in view of *Haeri* and further in view of U.S. Patent No. 6,886,029 ("*Pecus*").

Claims 16, 35, and 49 have been amended, and Applicants respectfully submit that the amendments overcome this rejection and add no new matter. Claim 16 is patentably distinguishable over the cited art for at least the reason that it recites, for example "receiving, at a receiver, a dynamic network information table inserted within a transport stream from a first device, the dynamic network information table including a device-specific subtable and an upstream subtable, the device-specific subtable including information associated with transmission characteristics of the first device, the first device positioned in the digital subscriber network upstream with respect to the receiver, the upstream subtable including information associated with transmission characteristics of one or more devices positioned in the digital subscriber network upstream with respect to the first device, wherein the transmission characteristics include the current network status and the current level of available bandwidth for each transport stream communicating with the first device". Independent claims 35 and 49 include a similar limitation. Support for these amendments can be found in the specification at least in paragraphs [0121, 0127].

Kenner fails to teach or suggest the above-emphasized limitation. As an initial matter, the Office Action does not sufficiently disclose how the elements of the claims are met, e.g., it is not explained which elements of *Kenner* correspond to the claimed receiver, first device, or one or more upstream devices. Paramount to any grounds of rejection is an explanation of how the elements of the claim are described by a cited reference, but such explanation has not been provided with respect to each element of

the claims. This defect is particularly pertinent to independent claims 35 and 49, and their respective dependents, because these claims were summarily rejected on page 6 of the Office Action “for similar reasons as stated above [with respect to claim 16]” although these claims contain a number of limitations different from or additional to those of claim 16. (Final Office Action, p. 6). Thus, the rejection is deficient because it fails to contain **any** explanation of how the art allegedly renders claims 35 and 49 obvious.

Regardless, *Kenner* does not teach the claimed dynamic network information table. *Kenner* states that a “correlation can be drawn between a user’s IP address and a delivery site that offers better data delivery performance”, and that the “correlated data is used to produce a look-up table”. (*Kenner*, 16:37-41). In particular, *Kenner* states that the “look-up table is formed comprising a list of first-byte IP addresses numbering 0-255, and for each address, a list of delivery sites providing improved performance for users having corresponding IP addresses”. (*Kenner*, 17:24-28). Upon a user request in *Kenner*, a “redirection server analyzes the user’s IP address and examines the list of potential delivery sites on the look-up table to determine what delivery site or sites are correlated with the user’s IP address”. (*Kenner*, 18:20-23). The system of *Kenner* may also “subdivide[] the look-up table into smaller sublists with a given range of addresses” and “download (step 142) to the user a small file containing the sublist”. (*Kenner*, 18:61-19:1).

The Final Office Action appears to equate the IP address look-up table of *Kenner* with the claimed dynamic network information table including an upstream subtable. (Final Office Action, pp. 2-3). *Kenner* does not disclose these features. First, *Kenner*’s

teaching of a static look-up table correlating IP addresses with preferred delivery sites is not a teaching or suggestion of a dynamic table, as required by all present claims. Second, *Kenner's* look-up table fails to include any information about devices positioned upstream to the delivery sites, and thus fails to teach or suggest a dynamic table including information associated with transmission characteristics of one or more devices positioned upstream with respect to the first device, as required by claim 16 and its dependent claims. Third, *Kenner* fails to teach a method or system wherein a dynamic table including information related to an upstream device is transmitted to a device or apparatus, which adds information relating to itself before passing the table with the added information downstream, as required by claims 35 and 49, and their respective dependent claims. Therefore, *Kenner* fails to teach the dynamic network information table limitation of the claimed invention.

Haeri fails to remedy the deficiencies of *Kenner*. *Haeri* appears to discuss communicating network information using protocols based on Universal Resource Locators (URLs), including the use of EIGRP (Enhanced Interior Gateway Routing Protocol) with URLs. (*Haeri*, 14:64-16:36). The Final Office Action argues that the “get” command to obtain a routing table entry discussed at col. 15 of *Haeri* somehow correlates with the claimed dynamic network information table, but this argument is not supported by *Haeri's* disclosure and in fact is contradicted by the nature of EIGRP itself. (Final Office Action, pp. 3-4).

Claim 16 requires that a dynamic network information table is passed from a first upstream device or devices to a downstream receiver, with the first device adding information relating to itself before passing the table downstream. EIGRP does not

involve such dynamic network information tables. EIGRP is a distance-vector routing protocol, in which an individual router knows only what its neighbors know about the overall network. It is therefore fundamentally different then where network information may be ***dynamically propagated*** throughout the network, and a downstream device is made aware of the entire upstream network topology through the passage of a dynamic network information table.

Moreover, even if a router in *Haeri* is able to obtain routing information from its neighbor via a “get” request, there is no teaching or suggestion in *Haeri* that the routing information is dynamic, or that it includes information about devices positioned upstream to a delivery site. There is no teaching or suggestion that the routing table of *Haeri* includes information associated with transmission characteristics of one or more devices positioned upstream with respect to the first device, or that a device or apparatus receives a dynamic network information table from an upstream device and then adds information relating to itself before passing the table with the added information downstream.

Rakib fails to remedy the deficiencies of *Kenner* and/or *Haeri*. *Rakib* merely appears to disclose packets containing packet identifiers. (*Rakib*, 10:23–11:11). Similarly, *Nobakht* fails to remedy the deficiencies of *Kenner*, *Haeri*, and/or *Rakib*. *Nobakht* merely appears to disclose the transmission of network information tables on transport streams. (*Nobakht*, 11:29-64).

Likewise, *Nakamura* fails to remedy the deficiencies of *Kenner*, *Haeri*, *Rakib*, and/or *Nobakht*. *Nakamura* merely appears to disclose generating and transmitting alert messages. (*Nakamura*, 10:28-11:13). Also, *Pecus* fails to remedy the deficiencies

of *Kenner, Haeri, Rakib, Nobakht*, and/or *Nakamura*. *Pecus* merely appears to discuss the usage of bit error information. (*Pecus*, 30:5-19).

For at least the reason that *Kenner, Haeri, Rakib, Nobakht, Nakamura*, and/or *Pecus* fail to disclose, teach or suggest “receiving, at a receiver, a dynamic network information table inserted within a transport stream from a first device, the dynamic network information table including a device-specific subtable and an upstream subtable, the device-specific subtable including information associated with transmission characteristics of the first device, the first device positioned in the digital subscriber network upstream with respect to the receiver, the upstream subtable including information associated with transmission characteristics of one or more devices positioned in the digital subscriber network upstream with respect to the first device, wherein the transmission characteristics include the current network status and the current level of available bandwidth for each transport stream communicating with the first device”, Applicant respectfully submits that *Kenner, Haeri, Rakib, Nobakht, Nakamura*, and/or *Pecus* do not anticipate Claim 16. Claims 35 and 49 contain similar limitations. Therefore, Applicant requests that the rejection of Claims 16, 35, and 49 be withdrawn.

Dependent Claims 17-21, 25-26, 36-40, 42, 44, 46-48, 50-56, 58, and 60-63 are also allowable at least for the reasons described above regarding independent Claims 16, 35, and 49 by virtue of their respective dependencies upon independent Claims 16, 35, and 49. Accordingly, Applicants respectfully request withdrawal of this rejection of dependent Claims 17-21, 25-26, 36-40, 42, 44, 46-48, 50-56, 58, and 60-63.

III. Conclusion

Applicants respectfully request that this Amendment After Final be entered by the Examiner, placing the claims in condition for allowance. Applicants respectfully submit that the proposed amendments of the claims do not raise new issues or necessitate the undertaking of any additional search of the art by the Examiner, since all of the elements and their relationships claimed were either earlier claimed or inherent in the claims as examined. Therefore, this Amendment should allow for immediate action by the Examiner.

Finally, Applicants respectfully submit that the entry of the Amendment would place the application in better form for appeal, should the Examiner dispute the patentability of the pending claims.

In view of the foregoing remarks, Applicants respectfully submit that the claimed invention, as amended, is neither anticipated nor rendered obvious in view of the prior art references cited against this application. Applicants therefore request the entry of this Amendment, the Examiner's reconsideration and reexamination of the application, and the timely allowance of the pending claims.

The preceding arguments are based only on the arguments in the Official Action, and therefore do not address patentable aspects of the invention that were not addressed by the Examiner in the Official Action. The claims may include other elements that are not shown, taught, or suggested by the cited art. Accordingly, the preceding argument in favor of patentability is advanced without prejudice to other bases of patentability.

Please grant any extensions of time required to enter this amendment and charge any additional required fees to our Deposit Account No.13-2725.

Respectfully submitted,
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